No. 85-5915

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

BRENDA E. WRIGHT, GERALDINE H. BROMAN, and SYLVIA P. CARTER, Individually and on behalf of all persons similarly situated,

Petitioners,

v.

CITY OF ROANOKE REDEVELOPMENT AND HOUSING AUTHORITY,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

MOTION FOR LEAVE TO FILE A BRIEF *AMICUS CURIAE* AND BRIEF OF THE NATIONAL ASSOCIATION OF HOUSING AND REDEVELOPMENT OFFICIALS, THE HOUSING AND DEVELOPMENT LAW INSTITUTE, THE PUBLIC HOUSING AUTHORITIES DIRECTORS ASSOCIATION AND THE HOUSING AUTHORITY OF THE CITY OF LAS VEGAS, NEVADA

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The National Association of Housing and Redevelopment Officials, the Housing and Development Law Institute, the Public Housing Authorities Directors Association and the Housing Authority of the City of Las Vegas, Nevada, respectfully move this Court for leave to file the attached brief after the time provided in Rule 36 for the filing of a brief *amicus curiae*. This motion and brief in support of Respondent is submitted with the written

consent of counsel for both parties filed with the Clerk of the Court.[1]

Amici did not become aware that this case was before the Supreme Court until after the time limit prescribed by Rule 36 of the Rules of this Court for filing briefs *amicus curiae*. As soon as they learned this fact, *Amici* moved expeditiously to obtain counsel who immediately commenced preparation of this brief.

The decision of the Court in the present case will have a significant and long-lasting impact on each of the *Amici* and their members. This Court has generally permitted the participation of industry and other national associations in cases such as this, which involve issues of special concern to a particular sector of the economy or industry nationwide.[2]

The National Association of Housing and Redevelopment Officials ("NAHRO") is the largest national organization of public officials in housing, community development and redevelopment. NAHRO was created in 1933 and currently has 2,170 agency members and 5,092 individual members. The agency members include 1,527 housing authorities engaged in the management and development of low-income housing. More than 90 percent of the 1.25 million public housing units in this country are owned and managed by NAHRO members.

Because of the size and diversity of its membership, its more than 50 years of accumulated experience with assisted housing, and its broad goal of improving the overall standard of housing in the United States, NAHRO can make a uniquely important contribution to this case. NAHRO can assist the Court in evaluating the nationwide impact and practical significance of the issue presently before the Court by supplying information and a perspective not presented by the parties.

The Housing and Development Law Institute ("HDLI") is a national resource center focusing on the legal issues facing local housing and development agencies. Its membership includes approximately 140 housing authorities and their counsel. Because HDLI's role is to serve as a resource and forum for the exchange of information and ideas on legal problems such as the one presented in this case, it is in the best position to provide this Court with information on the practical impact and importance of the pending decision for public housing agencies nationwide.

The Public Housing Authorities Directors Association ("PHADA") is an organization of more than 800 public housing authority Executive Directors across the United States. Its primary purposes are to keep public housing authorities informed about regulatory and congressional action on matters affecting public housing and to provide educational and training programs for senior housing management officials. Given its membership and purposes, PHADA has a special interest in legal issues which affect the efficiency and cost of public housing management.

The Housing Authority of the City of Las Vegas, Nevada ("Las Vegas Housing Authority"), acquires, constructs and manages low-cost housing in the city of Las Vegas. It owns over 3,000 housing units, including about 2,600 units which are part of the public housing program financed by the federal government. It is currently a defendant in a suit brought under the United States Housing Act of 1937 and 42 U.S.C. § 1983 in which public housing tenants are challenging certain fees it charges.

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[1] *See* letter dated June 18, 1986 from Bayard E. Harris, on behalf of Respondent City of Roanoke Redevelopment and Housing Authority, and letter dated June 18, 1986 from Henry L. Woodward, on behalf of Petitioners Brenda E. Wright et al.

[2] *See, e.g., Western Airlines v. California*, 53 U.S.L.W. 3484 (U.S. Jan. 7, 1985) (Motion of Air Transport Association of America for leave to file brief *amicus curiae* granted); *Peick v. Pension Benefit Guaranty Corp.*, 465 U.S. 1098 (1984) (American Trucking Association).

The consequences of the decision in this case will be felt by the entire public housing industry, not just by the City of Roanoke Redevelopment and Housing Authority. Because they represent such a wide cross-section of housing authorities, NAHRO, HDLI and PHADA are in a position to convey the industry's concern with this decision and to present factual information that will underscore this concern. Similarly, because the facts relating to the Las Vegas Housing Authority differ materially from those before the Court in the instant case, Las Vegas can advise the Court as to the wider dimensions of the issue presented. Thus, NAHRO, HDLI, PHADA and the Las Vegas Housing Authority respectfully submit that their participation as *Amici Curiae* will assist the Court in resolving this case by providing a broad perspective on the decision below and its impact on the public housing program.

For the foregoing reasons, NAHRO, HDLI, PHADA and the Las Vegas Housing Authority respectfully move this Court for leave to file a brief *amicus curiae*, beyonu the time period set forth in Rule 36, supporting the position of Respondent.

Respectfully submitted,

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This brief in support of Respondent is submitted with the written consent of counsel to both parties filed with the Clerk of the Court.

INTEREST OF THE *AMICUS CURIAE*

The National Association of Housing and Redevelopment Officials ("NAHRO") is the largest national organization of public officials in housing, community development and redevelopment. NAHRO was created in

1933 and currently has 2,170 agency members and 5,092 individual members. The agency members include 1,527 housing authorities engaged in the management and development of low-income housing. More than 90 percent of the 1.25 million public housing units in this country are owned and managed by NAHRO members.

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The Public Housing Authorities Directors Association ("PHADA") is an organization of more than 800 public housing authority Executive Directors across the United States. Its primary purposes are to keep public housing authorities informed about regulatory and congressional action on matters affecting public housing and to provide educational and training programs for senior housing management officials. PHADA has a special interest in legal issues which affect the efficiency and cost of public housing management.

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The consequences of the decision in this case will be felt by the entire public housing industry, not just the City of Roanoke Redevelopment and Housing Authority. Representing a wide cross-section of housing authorities, NAHRO, HDLI, PHADA and the Las Vegas Housing Authority seek, as *Amici* in this case, to convey the industry's conviction that the resolution of public housing rent disputes should remain within the province of state courts as intended by the framers of the public housing program.

SUMMARY OF ARGUMENT

I.

Over 1.25 million tenant families reside in public housing projects in this nation. Because the construction and, to a lesser extent, the operation of these projects are subsidized by the federal government pursuant to the United States Housing Act of 1937, the local housing authorities which own and operate these projects must follow federal regulations in making annual rent determinations for each of these families. These calculations are highly individualized and depend on a myriad of factors affecting income and utility utilization. If Section 1983 can be utilized to enforce the statutory limitations applicable to public housing rents in federal court, each rent adjustment has the potential to become a federal case with the attendant delays and expenses. The resulting burden upon public housing authorities and the federal courts could be insuperable.

II.

Congressional intent must be examined to ascertain whether a Section 1983 remedy is available to enforce public housing rent limitations under the United States Housing Act of 1937. The "contemporary legal context" of the 1937 Housing Act, the traditional role of

the states and the overall legislative scheme reflect an intent to supplant a Section 1983 remedy.

Decentralization was a prominent theme in the enactment of the public housing program in 1937, reflecting strong and explicit federalism concerns. The respective roles of the federal government and the local authorities have remained the same since that time: the federal government is the financier and regulator while the local authority is the owner and operator of public housing. It would distort these roles and subvert the intent of the Congress to make the federal courts the arbiters of public housing rent disputes between the owner and the tenant.

Each local housing authority has obligations to the federal government which flow from a contract incorporating by reference the Housing Act and implementing regulations. In contrast, the rights of public housing tenants flow from their leases. The local public housing authority is answerable in state court for violations of those rights. This is traditionally the forum for resolving landlord-tenant disputes, whether the owner is a public or private entity. Recent amendments to the Housing Act are premised on the availability of state remedies. The decision of the court below is thus consistent with the history of both the enactment and the enforcement of the law.

ARGUMENT

I. THE AVAILABILITY OF A SECTION 1983 REMEDY TO RESOLVE PUBLIC HOUSING RENT DISPUTES WOULD IMPOSE A TREMENDOUS BURDEN ON THE FEDERAL COURTS AND PUBLIC HOUSING AGENCIES.

Over 1.25 million families in this nation currently lease and occupy public housing units. Their landlords are among 3005 public housing authorities created pursuant to state enabling statutes.[1] These authorities build, own and operate housing projects for low-income families.[2] The federal government finances the construction of the projects and partially subsidizes their operating expenses, as authorized by the United States Housing Act of 1937[3] ("Housing Act"); it does not own, and is not permitted to own, a single unit of public housing.[4]

In consideration of federal financial assistance to build and operate their projects, the local housing authorities

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[1] M.L. Matulef, *NAHRO Housing and CD Agency General Characteristics* 2, 4 (NAHRO 1986).

[2] For a short overview of the origins and structure of the public housing program, see Gelletich, *Federal Housing and Community Development Programs and the Local Authority*, in The Commissioner's Legal Handbook at 3-4 (HDLI 1986).

[3] 42 U.S.C. §§ 1437 *et seq.* (1982 & Supp. II 1984). Federal operating subsidies constitute half of the money needed to operate public housing. Rents paid by tenants make up 43% of the necessary additional funds and the balance is derived from investments and miscellaneous sources. *See* U.S. Dep't of Housing and Urban Development, Low Income Public Housing Program, Statement of Operating Receipts and Expenditures, Fiscal Year Ended March 1983.

[4] In fact, the federal government was ousted from an ownership role in 1936 by the decision in *United States v. Certain Lands*, 9 F. Supp. 137 (W.D. Ky.), *aff'd*, 78 F.2d 684 (6th Cir. 1935), *cert. denied*, 297 U.S. 726 (1936). This decision was a critical factor in the structuring of the Housing Act a year later.

agree to follow regulations issued by the U.S. Department of Housing and Urban Development ("HUD").[5] Under these regulations, the housing authorities must obtain income certifications from all tenants each year and determine their rents with reference to their income.[6] Statutory limits set the parameters for these rent calculations, but each determination must be made individually. The primary factor in the computation is family income from all sources, but, because of the complexity of the definition,[7] opportunities for errors and differences in judgments abound. These calculations are further complicated by the computation of utility allowances which must take into account "estimated Utility consumption attributable to tenant-owned major appliances or to optional functions . . . of PHA-furnished equipment."[8] It is not surprising that, under these circumstances, rent disputes, which may culminate in eviction proceedings, are common.[9]

From these facts, it is apparent that the result Petitioners seek here—to use 42 U.S.C. § 1983 to enforce Housing Act rent limitations—could have a major impact on both the housing authorities and the federal courts. Well over a million individual public housing rent decisions are made each year. Many other policy decisions are made affecting methods of calculation and

[5] *See infra* notes 16 and 17 and accompanying text.

[6] 24 C.F.R. § 960.209(a) (1985). Tenants' compliance with this process is secured by a mandatory provision in their leases. 24 C.F.R. § 966.4(c) (1985).

[7] Income includes such items as welfare, salaries, interest, periodic insurance proceeds (but not lump sum insurance payments), alimony, regular gifts (but not sporadic gifts), and scholarship amounts in excess of tuition and fee expenses. 24 C.F.R. § 913.106 (1985).

[8] 24 C.F.R. § 965.477(b) (1985).

[9] *See, e.g., Greenville Housing Authority v. Salters*, 316 S.E.2d 718 (S.C. Ct. App. 1984), *cert. denied*, 105 S. Ct. 1218 (1985).

definitions of terms. If the Petitioners prevail, each of these decisions could become federal cases with the attendant delays and expenses.[10] This is why the outcome of this case is so important to the *Amici*.

II. THE CONGRESSIONAL SCHEME FOR ENFORCING PUBLIC HOUSING RENT LIMITS SUPPLANTS ANY SECTION 1983 REMEDY.

A. The Intent of Congress Is the Touchstone for Ascertaining Whether a Section 1983 Remedy Is Unavailable.

Whether a Section 1983 remedy is available to enforce public housing rent limits depends in the first instance[11] on whether Congress supplanted such a remedy when it enacted the Housing Act. *Middlesex County Sewerage Authority v. National Sea Clammers Association*, 453 U.S. 1, 21 (1981). It is difficult to discern congressional intent in this regard since the Housing Act was adopted a half-century ago, long before this Court ruled that

[10] For example, as of what date must a tenant's rent be reduced when an income-earning family member moves out of the unit? *See Greenville Housing Authority v. Salters, supra*. Are gifts "casual" and "sporadic" or "regular"? Was a child who earned a certain amount of money under 18 at the time, and are her earnings therefore excludable from "income"? The definition of "rent" also contributes to controversy. Maintenance charges have been held not to be rent, applying local law. *District of Columbia v. Montgomery*, L&T No. 91801-80, slip op. at 14 (D.C. Super. Ct. Mar. 12, 1981). Nor are security deposits. *Peterson v. Oklahoma City Housing Authority*, 545 F.2d 1270, 1274-75 (10th Cir. 1976). Whether range and refrigerator fees are part of rent is currently at issue in *Brown v. Housing Authority of Las Vegas*, No. CV-LV-86 305-HDM (D. Nev.).

[11] The second inquiry, which the *Amici* do not address here, is whether the Housing Act created the kind of rights that are enforceable under § 1983. *Pennhurst State School & Hospital v. Halderman*, 451 U.S. 1, 28 (1981); *Middlesex County Sewerage Authority v. National Sea Clammers Association*, 453 U.S. 1, 19 (1981).

Section 1983 was available to enforce federal statutory rights.[12] Nevertheless, the statutory scheme for enforcing rent limits, as amended as recently as 1983, and the "federalism concerns" which permeated the original concept of the public housing system, confirm the view of the *Amici* that Congress "intended to supplant any remedy that otherwise would be available under § 1983." *Sea Clammers*, 453 U.S. at 21.

This Court has not expressly spelled out the factors that should be examined to ascertain intent in this situation. We share the view of Respondent, however, that the kinds of evidence of legislative intent that this Court has identified in other contexts are pertinent to this inquiry as well.[13] For example, congressional intent is critical in analyzing whether a private right of action may be implied from a federal statute. *Sea Clammers*, 453 U.S. at 13; *Texas Industries v. Radcliff Materials, Inc.*, 451 U.S. 630, 639 (1981).

As part of this analysis, the Court has considered whether a private right of action was part of the "contemporary legal context" in which the Congress legislated, *Merrill Lynch, Pierce, Fenner & Smith v. Curran*, 456 U.S. 353, 381 (1982), the identity of the class benefitted, the traditional role of the states in the area and the overall legislative scheme, *Texas Industries, Inc. v. Radcliff Materials, Inc.*, 451 U.S. at 639. When applied in this case, these factors demonstrate that Section 1983 was never meant to be an available remedy to resolve public housing rent disputes.

B. "Federalism Concerns" Which Pervaded the 1937 Housing Act Are Evidence that a Section 1983 Remedy Is Unavailable.

When it was adopted in 1937, the Housing Act "contemplate[d] a complete decentralization of the housing

[12] *Maine v. Thiboutot*, 448 U.S. 1 (1980).

[13] Brief for Respondent at 34-36.

program." H.R. Rep. No. 1545, 75th Cong., 1st Sess. 2 (1937).[14] Consistent with this intent, a provision that authorized the federal government to develop and operate public housing projects on a demonstration basis was stricken from the bill.[15] In fact, the law incorporated authorization for the disposition of housing previously constructed by the federal government "in order that the Federal Government may move in the direction of getting out of the housing business." 81 Cong. Rec. 9588 (1937) (statement of Senator Walsh).

Since that time, the Housing Act has been frequently amended, but the respective roles of the federal government and local authorities have remained the same: the federal government is the financier and regulator while the local authority is the owner and operator of public housing. Consistent with these roles, federal court is the place to resolve disputes between HUD and the local authority, whereas state court is the proper forum for handling controversies between the local authority, as owner, and its tenants. If Section 1983 can be used to make the federal courts the arbiters of rent disputes between the owner and the tenant, this statutory framework, and the intent of the Congress in designing it, will be subverted.

[14] *See also* S. Rep. No. 933, 75th Cong., 1st Sess. 10 (1937). When asked who was responsible for building and owning public housing projects, Senator Wagner responded, "The local authority. It is an absolutely decentralized bill." 81 Cong. Rec. 7980 (1937); *see also* 81 Cong. Rec. 7988-89 (1937).

[15] Secretary Ickes submitted a statement which was offered by Senator King as part of his remarks supporting the elimination of this provision. Secretary Ickes advocated the "authorization of a purely non-Federal housing program . . . except for Federal financial and technical assistance." 81 Cong. Rec. 8179 (1937). In the House, Congressman Hancock echoed this view, saying that "permanent Federal Government landlordism and janitorism should never be part of the policy of the bill." 81 Cong. Rec. 9249 (1937).

C. Public Housing Rent Limits Are Intended To Be Enforced Through Local Agency Procedures and State Courts.

By accepting federal subsidies to finance and operate their project, public housing authorities obligate themselves to obey the Housing Act and to follow HUD regulations issued pursuant to that statute. The document that spells out these obligations is the Annual Contributions Contract ("ACC") which HUD and the public housing authority sign.[16]

Public housing tenants are not parties to the ACC. The terms of their relationship with the PHA are spelled out in their lease and their rights and obligations flow from this document. Among these obligations is the duty to pay the rent stated and to submit the information needed to adjust their rent annually based on family income and composition.[17] A tenant's claim that rent was incorrectly determined, therefore, arises from the lease agreement. Like other lease violations, it may be asserted in the forum designated by the state for hearing landlord-tenant disputes.[18] With respect to such disputes, public housing tenants stand in the same position as any other tenants who seek to enforce their rights and interests.

Until Section 1983 was recognized as a vehicle to enforce statutory rights, it was presumed that state courts

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[16] HUD accordingly has the power and responsibility to enforce those provisions of law against any agency which enters into an ACC. The ACC says this explicitly and provides three methods of enforcement: court action, reconveyance and termination of funds. An ACC is part of the record in this case (R. 30). The enforcement provisions are in §§ 401f, 502 and 508.

[17] 24 C.F.R. § 966.4(c); 24 C.F.R. Part 913.

[18] Many jurisdictions have specialized housing or landlord-tenant courts created for the very purpose of hearing such disputes. *See, e.g.*, Urban Housing Courts and Landlord-Tenant Justice: National Models and Experience (ABA 1977).

provided a forum that was both appropriate and adequate for public housing tenants with a grievance against their landlord. For example, when this Court ruled that a public housing authority was required to notify a tenant of the reasons for terminating his tenancy, it also observed that the tenant could "effectively challenge their legal sufficiency in whatever eviction proceedings may be brought in the North Carolina Courts." *Thorpe v. Housing Authority of Durham*, 393 U.S. 268, 284 (1969).

Not surprisingly, both the Fourth and the Eleventh Circuits have observed that landlord-tenant relations are "customarily the domain of state law." *Brown v. Housing Authority of McRae, Georgia*, 784 F.2d 1533, 1539 (11th Cir. 1986); *Perry v. Housing Authority of Charleston*, 664 F.2d 1210, 1216 (4th Cir. 1981). The hundreds of public housing rent-related eviction actions resolved each year in the state and local courts are further evidence that this is the norm. Even where public housing projects have been mismanaged, one district judge commented that "the federal courts cannot pretend to be the cure-all for America's housing ills. Federal courts lack the expertise, the staff and the congressional mandate to do the job." *Boston Public Housing Tenants' Policy Council, Inc. v. Lynn*, 388 F. Supp. 493 (D. Mass. 1974) (granting HUD's motion for summary judgment).

Congress rightfully was concerned about whether state and local courts offered adequate forums to protect the due process rights of public housing tenants. For this reason, three years ago it commanded HUD to require public housing authorities to provide grievance procedures which satisfied the constitutional standards of due process to hear tenant complaints about adverse actions, including evictions.[19] However, the new law also provided an exemption in connection with terminations of tenancy for

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[19] This statutory requirement was superimposed on a HUD regulatory requirement that had been in effect for many years. H.R. Rep. No. 123, 98th Cong., 1st Sess. 35 (1983).

public housing authorities in jurisdictions where tenants' rights were adequately protected in the state or local courts. The Congress stressed, however, that HUD must make a determination of adequacy "with respect to each court system or level in each state." [20]

This language reflects the long-standing assumption implicit in the Housing Act that disputes over rights arising from leases belong in state and local courts.[21] Section 1983 should not be utilized to override both the intent of the Congress under the Housing Act and a half-century of history.

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[20] Staff of Subcomm. on Housing and Community Development of the House Comm. on Banking, Finance and Urban Affairs, 98th Cong., 2d Sess., Compilation of the Domestic Housing and International Recovery and Financial Stability Act of 1983, at 321 (Comm. Print 1984); *see also* Section-by-Section Summary of H.R. 3959, Housing & Urban-Rural Recovery Act of 1983, *id.* at 149, 163 ("An agency may exclude procedures for eviction . . . if the local jurisdiction requires a court hearing which the Secretary determines will provide the basic elements of due process.").

[21] The language of the 1983 amendment also reflects an intent on the part of Congress to avoid conferring any rights directly upon the tenants. Rather, it imposed on HUD the duty to require each public housing authority to establish a grievance procedure that meets certain criteria. It also mandated that all public housing authorities "utilize leases" which include certain provisions and exclude certain others. 42 U.S.C. § 1437d(k), (*l*) (Supp. II 1984). Thus the amendment did not confer new statutory rights on the tenants themselves. Rather it expanded the rights they derive from their leases. These are the rights at issue in this case—rights that are meant to be adjudicated in local administrative proceedings or state courts.

CONCLUSION

The decision and judgment of the court below should be affirmed.

Respectfully submitted,

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